

At the March 24, 2004 preliminary hearing the claimant did not testify. The claimant's attorney noted that claimant was seeking additional medical treatment. Medical exhibits and Lizhao Wang's deposition transcript were offered into evidence. The ALJ denied claimant's request for additional treatment and payment of medical bills. Claimant's attorney stated in part:

Further, it's my understanding by agreement for preliminary hearing purposes only that the issues that will be before the Court are going to be limited to whether or not authorization of additional treatment either by Doctor Warren - - Doctor Warren as the Claimant requests, or however the Court sees fit, as well as the reimbursement of the prescription costs and medical mileage and bills that were just offered into evidence.¹

In his brief to the Board the claimant noted:

Since the only issues before the Judge Benedict for the Preliminary Hearing involved the payment of medical incurred by the claimant, and additional medical treatment, the facts presented will be brief.²

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes that this appeal should be dismissed as it fails to raise an issue over which the Board has jurisdiction to review from a preliminary hearing order.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Workers Compensation Act gives this Board specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and with timely written claim; and, (4) do certain other defenses apply. And the term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.³

Moreover, the Board can review preliminary hearing orders in which an ALJ has exceeded his or her jurisdiction.⁴

¹ P.H. Trans. at 5.

² Brief of the Appellant/Claimant (Apr. 29, 2004) at 2.

³ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

⁴ K.S.A. 44-551(b)(2)(A).

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide appropriate medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those are factual issues, however, over which an ALJ has the authority and jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁵

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁶

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this _____ day of May 2004.

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
Lynn M. Curtis, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁶ K.S.A. 44-534a(a)(2).